

June 9, 2000

Re: 00-0259

TO ALL PARTIES OF INTEREST:

Enclosed is a copy of the Memorandum from the Hearing Examiner to the Commission regarding recommended action at the Bench Session on June 7, 2000.

Sincerely,

Donna M. Caton  
Chief Clerk

DMC:jbm  
Enclosure

**Docket No.:** 00-0259  
**Bench Date:** 06-07-00  
**Deadline:** 06-19-00 (if applicable)

## **M E M O R A N D U M**

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**TO:** The Commission  
**FROM:** Larry Jones, Hearing Examiner  
**DATE:** June 2, 2000  
**SUBJECT:** Commonwealth Edison Company

Petition for expedited approval of implementation of a market-based alternative tariff, to become effective on or before May 1, 2000, pursuant of Article IX and Section 16-112 of the Public Utilities Act.

**STATUS:** An Interim Order was entered on April 27, 2000.

**REHEARING REQUESTS:** Applications for rehearing were filed on May 30 by the Attorney General of the State of Illinois on behalf of the People of the State of Illinois ("AG"), and by the Illinois Industrial Energy Consumers ("IIEC").

**RECOMMENDATION:** Dismissal of the rehearing applications as premature, without prejudice to being refiled after entry of a final order in this docket.

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### **Background**

As the Commission is aware, an Interim Order in this matter was entered and served on April 27, 2000. The Interim Order authorized Commonwealth Edison Company ("ComEd") to file tariffs, which became effective May 1, 2000, incorporating a market index based methodology for purposes of determining market value ("MV") under Section 16-112 of the Public Utilities Act ("Act"). These tariffs also make certain transitional options available for specified periods of time, such as an option whereby customers would be permitted to continue to pay customer transition charges based on the neutral fact finder ("NFF") methodology.

In order to establish an index-based MV tariff suitable for long term fair competition and to establish a process designed to fairly and accurately reflect the market value of power and energy, the Interim Order also directed all interested parties

to actively participate in Commission sponsored workshops to be scheduled by the Commission. These workshops will consider future modifications and improvements to the index-based MV methodology, and are intended to result in recommendations to the Commission, as part of the instant proceeding, for possible modifications to the index-based MV tariff which became effective May 1.

### **Rehearing Requests**

On May 12, 2000, Enron Energy Services, Inc. ("Enron"), an Intervenor, filed an application for rehearing. On June 1, Enron's application was dismissed as premature, without prejudice to being refiled after entry of a final order in this docket.

On May 30, 2000, rehearing applications were filed by the AG and by IIEC. IIEC argues in part that the ComEd proposal is not an exchange traded index, and in this and other respects does not meet the substantive requirements of Section 16-112. IIEC and the AG also argue that under the expedited schedule in this case, they did not have a sufficient opportunity to conduct discovery and otherwise participate in a fair and meaningful manner, and as such were denied their procedural due process rights. The AG also argues that the Order is not supported by substantial evidence, and that ComEd failed to meet its burden of proof.

Under Section 10-113 of the Act, the Commission has 20 days in which to grant or deny a rehearing application. Thus, the deadline for a rehearing application filed May 30, assuming it were properly before the Commission in other respects, would be June 19.

Generally speaking, under the appeal process in Section 10-201 of the Act, only *final* orders may be appealed to the appellate courts, and completion of the rehearing process under Section 10-113 is a prerequisite thereto. In the instant docket, the order entered by the Commission on April 27 was an *interim* order, not a final order. The proceedings in Docket 00-0259 are still pending before the Commission, and further activities and opportunities to participate in this docket are clearly contemplated before a final order will be entered. Therefore, it appears that any rehearing applications, and any Commission action on the merits thereof, would be premature at this juncture. Accordingly, it is my recommendation that the IIEC and AG rehearing applications be Dismissed as premature, without prejudice to being refiled after entry of a final order in this docket.

### **Other Alternatives Discussed on June 1**

At the bench session, I believe there was some discussion pertaining to the possibility of granting rehearing as to procedural issues, while denying rehearing as to substantive issues. Although "granting in part and denying in part" is an option which has been used by the Commission in some rehearing applications, I would note that this approach is normally used after entry of a final order, not an interim order. Also,

the thrust of the procedural arguments in this case is that the parties should have a more extensive opportunity to address the substantive issues. Because the procedural and substantive arguments are intertwined, considering and deciding the procedural issues during the statutory 150 day rehearing period, while addressing and deciding substantive issues after that, seems somewhat problematic.

LMJ/lw